IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. No. 1891 of 2007

DATE OF DECISION : 16.04.2007

Kultar Singh and another

.... PETITIONERS

Versus

Pritam Singh and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. R.S. Mamli, Advocate,
for the petitioners.

The plaintiffs, who have filed suit for specific performance of the agreement to sell dated 4.1.1999, have filed this petition under Article 227 of the Constitution of India for setting aside the order dated 14.2.2007, passed by Civil Judge (Junior Division), Jagadhri, whereby the trial court has dismissed their application for amendment of the plaint.

2. While amending the plaint, the plaintiffs want to introduce that even after execution of the sale deed in favour of the plaintiffs by subsequent purchaser Samay Singh-defendant No.2, they are entitled to the recovery of Rs. 1,05,000/-, which they had paid as earnest money to Mela Singh. The said application for amendment of the plaint has been dismissed by the trial court while observing that after filing of the suit, the plaintiffs have purchased the suit property from the subsequent purchaser, who was arrayed as defendant No.2, therefore, they have waived their right to seek enforcement of agreement to sell dated 4.1.1999. In view of this fact, it has been held that the plaintiffs are not entitled to claim the amount of earnest money from Mela Singh. However, it has been observed that it will be open for the plaintiffs to recover the said amount from Mela Singh by filing a separate suit.

3. I have heard counsel for the petitioners and gone through the impugned order.

4. During the course of arguments, a specific question was asked to counsel for the petitioners as to whether at the time of execution of the second sale deed, right against Mela Singh regarding recovery of Rs. 1,05,000/- was kept alive. In response to said querry, it has been stated that no such right was kept alive at the time of execution of the sale deed by Samay Singh in favour of the plaintiffs. In view of the said facts, I do not find any illegality in the impugned order.

5. Dismissed.

April 16, 2007 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**